

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

UNITED STATES OF AMERICA, and
COMMONWEALTH OF KENTUCKY,

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC., and
SOUTHERN BELLE DAIRY CO., LLC,

Defendants.

Civil Action No.: 03-206-KSF

DEFENDANT DAIRY FARMERS OF
AMERICA, INC.'S RESPONSES TO PLAINTIFF
UNITED STATES OF AMERICA'S FIRST REQUEST FOR ANSWERS
TO INTERROGATORIES AND FIRST REQUEST FOR DOCUMENT PRODUCTION

Defendant Dairy Farmers of America, Inc. ("DFA"), by and through its attorneys, hereby objects and responds to Plaintiff United States of America's First Request For Answers to Interrogatories And First Request For Document Production From Defendant Dairy Farmers of America, Inc. (Plaintiff's Discovery Requests") as follows:

I. GENERAL OBJECTIONS

The following general objections are hereby incorporated into each and every response below to each and every interrogatory and document request served by Plaintiff.

24. In the event that DFA inadvertently produces any information or document in response to any request or interrogatory that is or may be the subject of any of the foregoing objections, such production or response is not intended to be, nor shall it be deemed to be, a waiver of the objection with respect to the produced document or information. DFA reserves the right to demand the return of all copies of any such documents.
25. Nothing in these responses, including the production of documents, shall be deemed a waiver of any claim, privilege, defense, immunity, or objection to which DFA may be entitled.
26. DFA reserves the right to supplement or amend these objections, as well as the specific responses and objections set forth below.
27. DFA incorporates by reference herein its General Objections to each of Plaintiff's interrogatories and document requests and further objects and responds as follows:

II. INTERROGATORIES

1. **Identify and describe all facts and other information regardless of date that support any of the affirmative defenses asserted in DFA's Answer (including each specific representation or misrepresentation, instances of affirmative misconduct, or any other action or inaction taken by any representative of the United States that you contend is relevant to DFA's affirmative defense that the "United States is estopped from asserting, or has waived the right to assert, that DFA's acquisition of a partial ownership interest in Southern Belle Dairy Co., LLC violates Section 7 of the Clayton Act based on its [the United States'] prior actions involving predecessor cooperatives to DFA"), and identify all persons with knowledge of such facts and other information.**

RESPONSE: DFA incorporates by reference all applicable General Objections, as if fully restated herein, and no specific objection is intended to waive or modify any General Objection. DFA objects to Interrogatory 1 on the grounds that it is overly broad and unduly burdensome. DFA further objects to this interrogatory on the ground that it would require DFA to produce records that are subject to the attorney/client, work product or potentially other evidentiary privileges. DFA and its predecessor cooperatives have been involved in numerous investigations by the Department of Justice (the "Department") during the past eight years. The effect of DFA's ownership of partial interests in competing dairy processors were a part of such investigations, and with regard to some such investigations, a critical part. During such investigations, representatives of the Department have stated, and taken action consistent therewith (or affirmatively agreed or failed to disagree, to raise objections, and/or concerns) that the Department lacks any evidence whatsoever that DFA's simultaneous investment in competing fluid milk processors lessened competition in any relevant market. Accordingly, without waiving the foregoing objections, and while DFA does not have records of every statement, omission or act by the Department with regard to such matters, DFA can state that the following attorneys for the Department made such communications or took such actions on or about the following dates: March 2003, R. Hewitt Pate, Esq., Deborah Platt-Majoras, Esq., Mark Botti, Esq., John Read, Esq., J.D. Donaldson, Esq. and others regarding the DFA's acquisition of a partial ownership interest in SBD; October 2002, Mark J. Botti, Esq., John Read, Esq., J.D. Donaldson, Esq. and others regarding the same transaction; in October 2001, William Kolasky, Esq., Mark Botti, Esq. and others regarding the acquisition of Dean Foods Company by Suiza Foods Corporation; late 1999 Joan S. Huggler, Esq. regarding the acquisition of Southern Foods

Group, L.P. by Suiza Dairy Group, L.P.; August 1997, A. Douglas Melamed, Esq. and Donna N. Kooperstein, Esq. regarding the acquisition of Borden/Meadow Gold by Mid-America Dairymen, Inc. (DFA's predecessor in interest); August 1997, Michael P. Harmonis, Esq. and Joan S. Huggler, Esq. regarding the aforementioned Borden/Meadow Gold transaction.

DFA further refers Plaintiff to the affirmative action taken by the Department with respect to the 1995 transaction between Land-O-Sun Dairies, Inc. ("LOS") and Flav-O-Rich, Inc. ("FOR") whereby divestitures of milk distribution routes were permitted from one entity affiliated with Mid-America Dairymen, Inc. (LOS) to another (Valley Rich, LLC). Specifically, to resolve the competitive concerns raised by the Department regarding competition between the LOS and FOR fluid milk processing plants owned by each that supplied school districts and other customers in Virginia, West Virginia, North Carolina, South Carolina, and Tennessee, the Department required LOS to divest certain milk distribution routes to Valley Rich, LLC ("Valley Rich"), which was also 50% owned by DFA's predecessor in interest at the time. DFA is further able to identify the following information that supports its affirmative defenses at this time:

- (a) 1997 Final Judgment in *United States v. Mid-America Dairymen, Inc. and Southern Foods Group L.P.*;
- (b) August 29, 1997 Letter from W. Todd Miller to Michael P. Harmonis regarding proposed acquisition of Borden/Meadow Gold by Mid-America Dairymen, Inc. and subsequent communications regarding this letter;
- (c) Department of Justice Antitrust Division Press Release dated September 27, 1995, relating to the satisfactory conclusion of the investigation into the acquisition of FOR by LOS;

- (d) Department of Justice Antitrust Division Press Release dated September 3, 1997, relating to the satisfactory conclusion of the investigation into the acquisition of Borden/Meadow Gold by Southern Foods Group L.P.;
- (e) Documents and depositions relating to NDH's proposed acquisition of the assets of H.P. Hood Inc.;
- (f) Documents and depositions relating to DFA's partial acquisition of SBD;
- (g) Documents and depositions relating to Suiza Foods, Inc.'s acquisition of Dean Foods, Inc.;
- (h) Documents relating to Suiza Dairy Group L.P.'s acquisition of Southern Foods Group L.P.;
- (i) All documents and depositions relating to Southern Foods Group L.P.'s acquisition of Borden/Meadow Gold;
- (j) All documents and depositions relating to LOS' acquisition of FOR;
- (k) Complaint filed by the Department and the Commonwealth in this action;
- (l) To the extent available, the remaining answers to Interrogatory 1 may be derived or ascertained from the business records of DFA and documents previously produced to the Department in prior investigations of DFA and its predecessor in interest, including but not limited to documents produced in response to the Civil Investigative Demands and investigations identified in the General Objections. The burden of deriving or ascertaining such information is substantially the same for Plaintiff as it is for DFA. DFA, therefore, exercises its option pursuant to

Federal Rule of Civil Procedure 33, and subject to the General and specific Objections, to produce the non-privileged documents that contain information responsive to this Interrogatory.

2. **Identify each dairy or DFA affiliate whose actions or whose relationship with DFA is probative of DFA's asserted affirmative defense that DFA "cannot and has not controlled or influenced the behavior of either Southern Belle dairy or Flav-O-Rich dairy in a manner that would lessen competition with regard to the sale of milk to schools," state the time period over which each dairy's actions or relationship offers probative information of DFA's asserted defense, and describe all facts and other information that support this defense.**

RESPONSE: DFA incorporates by reference all applicable General Objections, as if fully restated herein, and no specific objection is intended to waive or modify any General Objection. DFA objects to Interrogatory 2 on the grounds that it is overly broad and responding thereto would be unduly burdensome. DFA and its predecessor cooperatives have had investments in dozens of dairies; DFA's relationship with each of these is to varying degrees "probative" of DFA's affirmative defense referenced in this Interrogatory. By the same token, DFA's relationship with every dairy in which it does not have any ownership interest is to varying degrees "probative" of DFA's affirmative defense. To describe all facts or other information that support DFA's affirmative defense with regard to each dairy (regardless of DFA ownership) would take immeasurable amounts of time, particularly since such facts and information establish a negative: that there is no credible evidence that DFA has acted to influence or attempt to influence the competitive behavior of any of fluid milk processing company in which it has an ownership interest with regard to that company's sale of milk to schools. Accordingly, DFA further objects to the interrogatory on the ground that it is vague and

DAIRY FARMERS OF AMERICA, INC.

By: *David A. Geisler*

Title: Corporate Vice President - Legal

STATE OF MISSOURI)

COUNTY OF PLATTE)

Subscribed and sworn to before me by David A. Geisler, the Corporate Vice President - Legal of Dairy Farmers of America, Inc., for and on behalf of Dairy Farmers of America, Inc., on this the 17th day of October, 2003.

My Commission expires:

"NOTARY SEAL"
Marsha A. Irwin, Notary Public
Clay County, State of Missouri
My Commission Expires 10/3/2006

Marsha A. Irwin

NOTARY PUBLIC

STATE OF _____)

COUNTY OF _____)

Subscribed and sworn to before me by _____, the _____ of
Dairy Farmers of America, Inc., for and on behalf of Dairy Farmers of America, Inc., on this the
_____ day of _____, 2003.

My Commission expires: _____

NOTARY PUBLIC

As to Objections:



David A. Owen
Theodore R. Martin
Greenebaum Doll & McDonald, PLLC
300 West Vine Street, Ste. 1100
Lexington, Kentucky 40507
Telephone: 859/288-4663

W. Todd Miller
Baker & Miller PLLC
915 15th Street, N.W. Suite 1000
Washington, D.C. 20005-2318
Telephone: 202/637-9499
Counsel for Defendant
Dairy Farmers of America, Inc.